

**APPLICANT:**  
Anthony Ferrara

**REQUEST:** Special exceptions to permit commercial vehicle storage and construction services in the Agricultural District and a variance to permit an 8 foot high fence in the front yard

**HEARING DATES:** March 14, 2007 and  
April 30, 2007

**BEFORE THE**  
**ZONING HEARING EXAMINER**  
**FOR HARFORD COUNTY**  
**BOARD OF APPEALS**

**Case No. 5589**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANT:** Anthony Ferrara

**LOCATION:** 1705 Ingleside Road – Land of Schmidt, Forest Hill  
Tax Map: 40 / Grid: 3A / Parcel: 373 / Lot: 4  
Third (3<sup>rd</sup>) Election District

**ZONING:** AG / Agricultural

**REQUEST:** A special exception, pursuant to Section 267-53D(1) of the Harford County Code, to permit commercial vehicle storage; and a special exception pursuant to Section 267-53H(1) to permit construction services; and a variance, pursuant to Section 267-24B(1) to permit a fence greater than 4 feet high (8 feet proposed) within the front yard in the Agricultural District.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

The subject property is a 2.58 acre parcel, zoned agricultural, and located on Ingleside Road in Forest Hill. The property is improved by a single family residence and detached garage, in-ground pool and privacy fencing.

The Applicant requests special exceptions for construction services and suppliers uses and commercial vehicle storage to allow the storage of equipment and vehicles used in his lawn care, landscaping and snow removal business. The Applicant also requests a variance to allow the retention of a 7-3/4 foot high fence.

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Mr. Ferrara testified that he purchased his property in May 2004, and resides there with his wife and their two children. He operates A.J. Landscaping, LLC which is a lawn maintenance and snow removal company. This business has been owned by him for about 10 years, and has been operated from the subject property since the time of the parcel's purchase.

The Applicant's business currently employs four (4) employees, plus the Applicant. Employees usually come to the property 3 days per week. On other days employees go directly to the job site. Mr. Ferrara's practice is to maintain equipment at job sites whenever possible in order to minimize gasoline use and wear and tear on the equipment. His employees drive their personal vehicles to the job site, or to his property depending upon where the equipment is located. Typically, equipment is taken from his property in the morning and returned in the afternoon and early evening, depending upon the time of the year.

Mr. Ferrara identified, on Applicant's Exhibit 8, the equipment which he now stores, and for which he seeks permission to store, on the subject property. That equipment is described as follows:

1. 1996 Chevrolet K-250 pickup truck
2. 2005 Chevrolet K-350 dump truck
3. 1997 Ford F-350 pickup truck
4. 1996 Kodiak dump truck
5. 2006 C-12 tow master
6. 2005 16 foot enclosed trailer
7. 2 skid loaders
8. 4 snowblades
9. Auger, forks and bucket attachments for skid loaders
10. Riding mowers and walk behind mowers
11. Miscellaneous rakes, shovels, weed eaters, etc.

The mowers, rakes, shovels, weed eaters and smaller equipment are typically stored within the 16 foot enclosed trailer.

The Applicant also has two personal vehicles and two motorcycles which he stores on the property.

Mr. Ferrara will not acquire more vehicles or equipment, although he will from time to time replace existing vehicles and equipment.

Typical hours of operation for the Applicant's business are 8:00 a.m. - 8:30 a.m. to 5:00 p.m. to 7:00 p.m. Again, typically, equipment leaves the property during the morning hours and returns at the end of the day.

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Mr. Ferrara states that he is respectful of his neighbors' property and concerns. Occasionally, although rarely, vehicles arrive onto his property after 8:00 p.m.

Mr. Ferrara has constructed a berm, and fence on top of the berm, along a portion of his frontage. The location of his fence can be seen on the Applicant's site plan (Applicant's Exhibit 6). This fence was constructed to provide some screening for the vehicles which are parked behind the fence. However, the Applicant also wishes to construct a 40 foot by 30 foot pole barn at a location shown on the site plan. The pole barn would be constructed generally behind (to the east) of the existing pool and surrounding privacy fence and, at its closest point, will be about 52 feet from the lot's southern property line. The pole barn will have a pitched roof and 12 foot doors, with its total height to be approximately the same as that of the existing detached garage. Applicant's Exhibit 10 is a drawing of the proposed pole barn, with specifications.

However, a 30 foot by 40 foot pole barn, with 3 doors, would not be large enough to store all of his equipment. Only if he were able to construct a 30 foot by 50 foot pole barn could all of the Applicant's equipment be stored inside. Accordingly, the Applicant indicated his intention to construct whatever size pole barn the Board of Appeals finds appropriate. Any outside storage necessary (although there should be no outside storage necessary if a 30 foot by 50 foot pole barn were constructed), would be behind the existing fence.

A small amount of fuel is also stored on-site, as well as grass seed, weed killing chemicals, and other hand tools and equipment typically used in a lawn maintenance and landscaping business.

Mr. Ferrara believes that his vehicles and equipment will be screened from Ingleside Road and adjoining residences by the pole barn, the existing fence, and additional plantings which he has made and is prepared to supplement. The Applicant has planted white pines along Ingleside Road.

The Applicant also proposes to plant leland cypress, having a height of at least 6 feet high when planted, and on 8 foot to 10 foot centers, along his southern property line. His adjoining neighbor is Mr. Hartman. Mr. Hartman had expressed to the Applicant, according to the Applicant, his lack of opposition to the request.

The fence, erected by the Applicant without a permit on Ingleside Road, is approximately 7-1/2 feet tall and located on top of a berm. As the berm is about 2 to 3 foot tall, the height of the fence above grade is about 9-1/2 - 10-1/2 feet. The Applicant requests a variance to allow a fence of 8 feet, believing it is necessary to provide adequate screening.

In particular, this fence helps screen vehicles and equipment for the home directly across Ingleside Road, which is owned by Mr and Mrs. Wright.

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On the subject property the Applicant expects to continue to perform minor repairs on his vehicles. He does not believe this use generates an extraordinary amount of noise. He believes the noise is similar to that generated on other properties.

In addressing the Staff Report, the Applicant did not agree that he should be limited to three (3) employees. He wants permission for a total of four (4) employees, plus himself.

Under cross-examination by a neighbor, the Applicant again stated that up to 2-1/2 days a week his equipment is actually located on job sites, not at the subject property. He will have no tractor-trailer deliveries to his property. The one delivery which was made in the past, and about which the examining neighbor complained, was a mistake and will not be repeated. The Applicant will not have guard dogs. He has modest security lighting.

The Applicant was then cross-examined by Fred Rohlfing, a neighbor who resides at 1700 Ingleside Road. In response to Mr. Rohlfing's questions, the Applicant explained that he does not expect his business to grow in the future, nor will he have additional employees. All of his employees are paid "above the table". When asked why he did not purchase a properly zoned property, the Applicant stated that he enjoys having his equipment on his property. He is able to watch it; he feels it is a better security situation.

For the Applicant next testified Edward Steere, a land planner with Frederick Ward Associates, who was offered and accepted as an expert in land use planning and zoning. Mr. Steere is familiar with the request of the Applicant and the site plan.

Mr. Steere explained that the existing septic reserve area is 40,000 square feet, which was the minimum septic reserve area required at the time the lot was subdivided. However, the Health Department regulations have changed so that now a septic reserve area can be 20,000 square feet minimum. The Applicant will be amending his subdivision plat to re-record a 20,000 square foot septic reserve area.

The proposed pole barn in which the Applicant will be storing his equipment would be approximately 340 feet from the house located across Ingleside Road, and about 380 feet from the house to the north.

The property (Lot 94 as identified on the site plan), which is located across Ingleside Road is the highest point in the area. From that point the topography drops down across the Applicant's property from front to rear. The elevation of the Applicant's property is about 480 feet. The elevation of the lot across Ingleside Road (the Wright property) is about 505 feet.

Mr. Steere proposes the Applicant install vegetative screening along the southern property line, as well as on the front, i.e., the Ingleside Road side, of the proposed pole barn. In a few years screening planted along the front of the pole barn will act to obstruct the view of the pole barn from neighbors across the street and users of Ingleside Road.

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Mr. Steere identified the neighborhood as consisting of homes along Ingleside Road, which is an isolated, dead-end road. Residential uses exist along both sides of the road. This area is shown as agricultural on the Harford County Land Use Plan.

Mr. Steere believes that all uses on the subject property can be screened, either by storage in the proposed pole barn or by vegetative screening and the existing privacy fence.

The agricultural zoning district allows a vast variety of equipment to be stored on agricultural properties as a principally permitted use. None of the equipment to be stored on the Applicant's property, if given approval, is unusual in agricultural zones. The pole barn proposed by the Applicant will be compatible with other similar structures in that agricultural district.

The use should have no impact on Ingleside Road. The area is similar to other agriculturally zoned areas of Harford County. The impact should be no different from the impact of other principally permitted uses in agricultural areas.

Mr. Steere believes that the existing privacy fence is a primary screen. Limiting the height of the fence will cause practical difficulty. The 7-3/4 foot fence provides important screening to the neighborhood from the proposed use. Mr. Steere identified a series of photographs of the subject property and the equipment stored on that property. The photographs were marked Applicant's Exhibits 7A - 7P.

The grade elevation of the site on which the proposed pole barn will be erected is about 7 to 8 feet below that of the existing garage. As a result, Mr. Steere believes that the elevation of the roof of the proposed pole barn will be similar to the elevation of the roof of the existing garage. Mr. Steere believes the leland cypress, as proposed by the Applicant, will make an effective screening. There is no need for screening on the east side of the property as to the east is an open area, with no residences.

Under cross-examination by Earl Winters, a neighbor, Mr. Steere indicated he had done no study on values or fiscal impact. He did not do a traffic impact analysis. Mr. Steere does not believe the vehicles owned by the Applicant and which utilize Ingleside Road are significantly different from UPS delivery vehicles or other vehicles typically seen in an Agricultural District.

Under cross-examination by David Wright, another neighbor, Mr. Steere indicated that the elevation of the pole barn site is about 490 feet. The elevation of the Wright's property, which lies directly across Ingleside Road from the subject property, is 505 feet. Mr. Steere again stated that the growth of trees both planted on Ingleside Road, and to be planted in front of the pole barn, will eventually act to fully screen the pole barn and other uses from view. This should take from 3 to 5 years. Mr. Steere does not believe that the white pine trees which were planted on Ingleside Road in front of the privacy fence will create an unsafe situation. Visibility should remain good, and tree growth should not interfere with passing motorists.

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Next for the Harford County Department of Planning and Zoning testified Dennis Sigler. Mr. Sigler states, in echoing the finding of the Staff Report, that the proposal meets the requirements of the Code. The Department believes that all equipment and vehicles should be stored within a building, and additional screening should be provided. Mr. Sigler agrees that leland cypress would be a good screen, growing 3 to 4 feet per year. They should be planted on 8 foot centers. The Department also prefers leland cypress be planted across the front of the property. The Department prefers leland cypress over the existing white pine.

The Department continues to recommend a three (3) employee limit. The Department does not believe additional employees should come to the property given the number of vehicles the Applicant is requesting permission to store. Sanitary facilities must be provided as required by the Harford County Department of Health in its letter of January 29, 2007, (Attachment 13 in the file). There are to be no additional equipment or vehicles stored on the property. There are to be no hazardous materials stored on the property. The requested special exception is to be for Mr. Ferrara's use only.

In opposition testified Earl Winters, who resides at 1701 Ingleside Road. Mr. Winters expressed his main concern as being possible expansion of the use, and the precedent approval would set in potentially allowing other commercial uses in the Ingleside Road neighborhood. Mr. Winters, who resides two lots down from the Applicant on Ingleside Road, believes that approval would "open a Pandoras Box". He is worried about adverse impact on his property values, and believes the use would impact the value of his property.

Next testified Mr. Rohlfing, who resides at 1700 Ingleside Road. Mr. Rohlfing introduced various photographs of the neighborhood and of the Applicant's property which were accepted and marked as Protestant's Exhibits 1-6.

Mr. Rohlfing believes that the entrance from Ingleside Road onto the Applicant's property constitutes a very dangerous situation. The pine trees planted along the frontage will impede visibility. Ingleside Road is a narrow road with changes in elevation. Trucks and commercial vehicles entering the Applicant's property will cause a potential safety hazard. The subject property is also an eye sore, with stumps and fallen pine trees littering the property. The subject property is not properly taken care of.

Traffic along Ingleside Road, on which 27 homes abut, is bad. School buses occasionally use the road. A blind curve exists at the entrance to the subject property. The travel lanes of Ingleside Avenue are only 9 feet wide, with trees growing right up to the roadway. It is dangerous. It is unsafe to walk, jog or bicycle on Ingleside Road. Truck traffic to and from the Applicant's property occasionally block Ingleside Road. Mr. Rohlfing is worried about "business creep". He likes his neighborhood and does not want to see businesses come into the neighborhood.

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Nest testified Mrs. Wright, who lives directly across Ingleside Road from the subject property. Mrs. Wright is opposed to the requested use. She feels an adverse economic impact on her property and on the neighborhood. Lighting from the subject property impacts her and her property. The noise generated by the use, including back-up alarms from the commercial vehicles, is constant and annoying. She does not believe the requested special exception use is suitable for a rural residential zoning district. This commercial use will affect her home's marketability. Ms. Wright is also concerned about environmental worries. She fears that chemicals brought onto the Applicant's property will cause a problem to the neighborhood. She specifically identified "Ice Melt" which she believes should not be on the Applicant's property. A small stream exists alongside the property which may be impacted by chemicals brought onto the subject property.

She is also uncomfortable with employees milling around the property in the morning and the evening. She is also annoyed by back-up beeping from the commercial vehicles and from power washing and other activities related to the trucks which take place on the property.

Mrs. Wright also believes the fence may be located on the County right-of-way.<sup>1</sup>

Mrs. Wright researched the surrounding uses, and allowable uses on those surrounding lots, before she purchased her property. She is appalled that the Applicant now seeks permission for his commercial vehicle storage and business. She cannot understand how this can be allowed.

Next testified Carol Kappus of 1685 Ingelside Drive. Ms. Kappus is concerned about the use of Ingleside Road. She described it as a very narrow road. At the curve on Ingleside she has met a trailer owned by the Applicant. It causes a problem due to the width of the road. She does not believe that Ingleside Road can handle the traffic. She also is annoyed and concerned by the profanity that she continues to hear from employees on the Applicant's property. She does not approve of this language, and she feels it adversely impacts her neighborhood.

Next in support of the Applicant testified Robert Landon of 1691 Ingleside Road. He believes that Mr. Ferrara has been treated unfairly. Ingleside Road is a narrow road, and many people speed on that road.

Mr. Ferrara was recalled to testify. Mr. Ferrara explained that the trees on his property were old, and caused a potential safety problem for his children. He accordingly removed the trees, but has not yet, because of weather, been able to take the stumps and logs off his property.

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<sup>1</sup> A review of the site plan shows that at least part of the privacy fence is located on property to the south, which is identified as being owned by Mr. Hartman.

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Mr. Ferrara has no intention of expanding his business. He did improve his driveway entrance in order to increase the visibility for his trucks and other vehicles leaving and entering his property. The driveway was opened up by about 4 to 5 feet. Prior to its widening, it was very difficult to see cars approaching along Ingleside Road.

Mr. Ed Steere was then recalled. He identified Ingleside Road as a typical road. It is adequate to support the requested use.

The hearing was then continued in order to allow the Department of Planning and Zoning, at the request of the Hearing Examiner, to revisit the subject property to determine if the proposed use would have any adverse impact on the users of Ingleside Road.

Accordingly, at the continuation of the hearing on April 30, 2007, Mr. McClune testified that the Harford County Department of Public Works, upon its investigation of the site, had determined that the driveway into the Ferrara property should be relocated to the southern part of the property. This would increase the sight distance along Ingleside Road as it would place the driveway more toward the crown of the hill. Without a relocation of the driveway, extensive re-grading of Ingleside Road would be necessary in its present location. Mr. McClune explained that a relocation of the driveway would allow motorists, as they exit the subject driveway, to see farther down Ingleside Road to the left upon exit. Mr. McClune stated that the driveway should be pushed as far south on the subject property as possible.

Ed Steere was then recalled for the Applicant. Mr. Steere agreed that moving the driveway south would provide more sight distance. He agreed that approval conditioned upon relocation of the driveway would be appropriate.

However, Mr. Steere also stated that in his opinion, the driveway could remain at its present location without adverse impact. Mr. Steere agreed that a sight distance of 280 feet at 25 m.p.h. is the National Design Standard.

The Applicant, Anthony Ferrara, then testified. Mr. Ferrara indicated his willingness to move the entrance closer to the top of the hill as recommended by the Harford County Department of Planning and Zoning.

Next was re-called Janet Wright. Mrs. Wright believes that the relocation of the driveway will create an adverse impact. Moving the driveway to the crest of the hill makes Ingleside Road less safe, giving motorists less time to react. The relocated driveway will be directly across from Mrs. Wright's driveway. There are five driveways in the immediate vicinity of the crest of the hill. Furthermore, the berm along the front of the subject property intrudes into the roadway. Ingleside Road at that location is approximately 17 feet wide, while it is 18 feet in all other areas. Accordingly the road is "pinched" at that point. Mrs. Wright also believes that the uses on the subject property would be more obscured by the present driveway, whereas the relocated driveway, which would be wider than the present driveway, would tend to open up the interior of the subject property to a greater degree.



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Mrs. Wright also described an accident which occurred at Ingleside Road and her driveway which involved her son, who was hit by a motorist as her son left her driveway. Mrs. Wright states that motorists cannot see over the crest of the hill and her son's accident is proof of that.

Next was called Steve Klima of 1706 Ingleside Road. Mr. Klima lives across from the subject property, next door to Mrs. Wright. Mr. Klima states that he is directly on the crest of the hill. He believes that moving the driveway back, farther south, actually gives motorists less sight distance than is available in its present location. He believes the better location is the present location, he does not believe the driveway should be moved.

Next testified Carol Ann Kappas. Ms. Kappas believed that the traffic counter which had been installed by the Department of Public Works on Ingleside Road was not in a proper location and, in fact, undercounted vehicles. Mr. McClune addressed this contention by stating that the traffic counter had been moved to a more appropriate location and the Department had determined that the traffic counts taken were accurate.

Next testified Dennis Reimann who owns property on Boggs Road and on Ingleside Road. Mr. Reimann is the owner of property which is located behind and adjoining the subject property. Mr. Reimann is also the owner of the 25 foot right-of-way which adjoins the subject property to its south side.

Mr. Reimann is also concerned that if the driveway is moved south, more of a visibility problem would be created. The crest of the hill is actually somewhat south of the subject property, and is actually in the location of the Reimann property. He does not believe the driveway should be moved because it would create more of a dangerous traffic situation.

Next testified Fred Rolfing. Mr. Rolfing believes that relocating the driveway closer to the crest of the hill is dangerous, and provides little sight distance. He believes sight distances are shorter at that location. The road is more narrow at that location, with no place for cars to go to avoid potential collisions. Mr. Rolfing believes the community is in danger because of the proposed use, and the traffic to be generated by that use.

Mr. McClune was recalled to testify. Mr. McClune stated the information concerning the relocation of the driveway originated in the Department of Public Works. However, Mr. McClune concurs in that opinion.

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### **APPLICABLE LAW:**

These special exception requests are governed by Sections 267-53D(1) and 267-53H(1) of the Harford County Code:

*“D. Motor Vehicle and related services.*

*(1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:*

*(a) The vehicles and equipment are stored entirely within an enclosed building or fully screened from view of adjacent residential lots and public roads.*

*(b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.*

*(c) A minimum parcel area of two (2) acres shall be provided.”*

Section 267-53H(1) of the Harford County Code states:

*“H. Services.*

*(1) Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to residential lot or visible from a public road.”*

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

*“Variances.*

*A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*

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- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
  - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

Furthermore, Section 267-9I of the Harford County Code, Limitations, Guides, and Standards, is also applicable.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

The Applicant is the owner of a 2.58 acre parcel, zoned agricultural, located on Ingleside Road in Forest Hill, Maryland. The property is improved by a one-story, ranch type dwelling in which reside the Applicant, his wife and family. The property is located in a neighborhood of approximately 18 single family homes, on similarly sized lots, which abut both sides of Ingleside Road. Ingleside Road itself extends approximately one mile from its intersection with Pleasantville Road before terminating in a dead-end. The subject property is located approximately half way along Ingleside Road.

Ingleside Road itself is a somewhat winding, 16 to 18 foot wide road similar to many other secondary, County maintained roads within Harford County. Vegetation in some spots grows to the travel portion of the road. A berm installed by the Applicant in his front yard is located immediately adjacent to Ingleside Road. The subject property fronts on Ingleside Road at the location of a rise and curve in the road which some witnesses characterized as a location of limited sight distance.

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A review of the aerial photographs in the file indicate a neighborhood<sup>2</sup> similar to many others in Harford County, containing 2+ acre size lots, improved by what appear to be relatively newly constructed homes. Obviously, this area was, in the relatively recent past, open pastureland and farm land.

The Applicant purchased his property in 2004 and decided at that time to move his lawn maintenance and snow removal business there. His business, A.J. Landscaping, LLC, employs four employees, plus the Applicant. Those employees report to the property on some days, on other days they go directly to the job site. The business day of the Applicant typically start at 8:00 a.m. and end 5:00 - 7:00 p.m.

The Applicant elected to store his business equipment to the southeast corner of the property, which is the corner located next to Ingleside Road. A gravel and macadam parking area was installed, and an approximately 8 feet tall fence was erected along Ingleside Road on top of a 2 to 3 foot berm. Behind the fence and on the gravel and macadam parking area the Applicant stores the following equipment which he uses in his business: 1996 Chevrolet pick-up truck; 2005 Chevrolet dump truck; 1997 Ford pick-up truck; 1996 Kodiak dump truck; 2006 C-12 tow master; 2005 16 foot enclosed trailer; 2 skid loaders; and miscellaneous snow blades, augers, forks, attachments, riding mowers, and walk behind mowers.

The construction by the Applicant of the fence, the storage of business equipment on his property, and the operation of his business from the property, were all undertaken and continue without benefit of a permit. A zoning violation notice was issued which apparently caused the filing of the request under consideration.

While zoned agricultural, the immediate neighborhood of the Applicant is almost entirely residential in use. No other businesses or commercial operations were identified as located along or using Ingleside Road. Presumably, however, agricultural equipment does, at least on occasion, use the road.

The neighbors, all being residents of Ingleside Road, complain persuasively about the noise and commotion which is generated by the uses on the subject property, and of their negative impact on the neighborhood. They complain of the sound of equipment, of back-up beepers, of employees coming and going, of profanity from employees, and of the use by the contractor's equipment of Ingleside Road. They complain of impact on Ingleside Road, and fear for their safety if the equipment continues to travel the road. They worry about chemicals being brought onto the property and constituting a potential threat. They object to the physical condition of the subject property, and the business aspect it brings to their residential neighborhood. The neighbors are well spoken and thoughtful in their comments which, for the most part, are supported by evidence of record.

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<sup>2</sup> Ed Steere, witness for the Applicant, identified the neighborhood in which the Applicant lives as consisting of those homes along Ingleside Road.

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It will be recommended that the requested special exceptions and variance be denied. For reasons which will be explained in more length below, it is difficult to imagine a use which would have more of an adverse impact in this particular area than that proposed and actually operated by the Applicant. To grant such uses would be to ignore the rights of these neighbors and the standards of the Harford County Development Regulations.

### **Variance.**

The Applicant requests a variance to allow an existing 7-3/4 foot fence (variously identified as 8 feet, 7-1/2 feet, 7-3/4 feet in height) to exist on top of an existing 2 to 3 foot berm along Ingleside Road. That berm and fence were erected by the Applicant in an obvious attempt to at least partially screen the equipment which he parks directly behind the fence and very close to the travel portion of Ingleside Road. The Code allows a 4 foot high fence without a variance. Accordingly, and as noted above, the existing fence is almost twice the height allowed under the Development Regulations, even if one were to measure from the top of the berm, and not ground elevation as is required by the Code.<sup>3</sup>

The Harford County variance standard contained at Section 267-11 of the Development Regulations requires the Applicant to show some uniqueness of the property or topographical condition which results in a practical difficulty or unreasonable hardship which would be caused by the literal enforcement of the Code. Furthermore, substantial detriment to adjoining properties must not result. The Applicant, however, does not attempt to meet this standard. Instead, the Applicant argues his variance is needed in order to help meet the special exception requirement that his equipment be fully screened from view of adjacent residential or potential lots, and public roads. Accordingly, the practical difficulty to be experienced by the Applicant if the variance is not granted is that the Applicant will not be able to meet the special exception condition if his equipment is stored outside. Such a suggestion cannot be a basis for the granting of a variance. The hardship which results for the Applicant must be related to some unique feature of his property. The desire of the Applicant to store vehicles and equipment outside in order to relieve the Applicant of the expense of constructing a storage building is simply not a hardship which meets the standards of Section 267-11.

In truth, the Applicant makes no serious showing that he is entitled to a variance for an 8 foot high fence. He asks for a variance so as to allow, he asserts, screening for the outside storage of equipment. His only hardship if denied the variance is that he must attempt to meet, in some other way, the special exception requirement that all equipment be fully screened. This is not a hardship sufficient to allow the granting of a variance.

Accordingly, it is recommended that the requested variance be denied.

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<sup>3</sup> Code, Section 267-24(B)(1) states: "Front Yards. For single-family detached units, walls and fences shall not exceed four feet in height above ground elevation."

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### **Special Exception Requests.**

The Applicant requests special exceptions to permit construction services and commercial vehicle storage. Without the variance for the 8 foot fence, the Applicant suggests he will be required to build a 40 foot by 50 foot, 18 foot tall pole barn in which to store his equipment. A building of 40 feet by 50 feet would contain 2,000 square foot of interior floor space which is the size of many new homes. Equipment sufficient to fill such a space is, indeed, indicative of a substantial business.

The specific requirements of the requested special exceptions are addressed as follows:

*D. Motor Vehicle and related services.*

- (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:*

The subject property is zoned agricultural.

- (a) The vehicles and equipment are stored entirely within an enclosed building or fully screened from view of adjacent residential lots and public roads.*

Without the variance for the fence, the vehicles and equipment must be stored within the enclosed building. As described above, the Applicant proposes to build a 40 foot by 50 foot building. However, the proposed building can only be constructed after a revised subdivision plat has been approved and recorded which reduces the septic reserve area from the existing 40,000 square feet to 20,000 square feet. The Applicant gave no time estimate as to how long that process would take or, in fact, whether the Health Department will approve such a relocation. Nevertheless, according to the uncontradicted testimony of the Applicant, and provided Health Department approval is granted, it will be possible for him to store all of his equipment within a 40 foot by 50 foot pole barn. Accordingly, this requirement can be met.

- (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.*

There will be no sales or service of construction and industrial equipment.

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- (c) *A minimum parcel area of two (2) acres shall be provided.*

The Applicant's property consists of 2.580 acres.

Accordingly, it is found that the Applicant will, with the construction of the 2,000 square foot building as proposed, will be able to meet the specific requirements of the Motor Vehicle and Related Services special exception.

Section 267-53H(1) is addressed as follows:

*H. Services.*

- (1) *Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to residential lot or visible from a public road.*

The Applicant is able to meet this requirement.

Accordingly, it can be seen that the Applicant conforms to the specific requirements of the applicable special exception statutes.

In addition to these specific requirements, the Applicant must further comply with the more generalized requirements of Limitations, Guides and Standards found at Section 267-9I of the Harford County Code, addressed as follows:

- (1) *The number of persons living or working in the immediate area.*

While described by both the Applicant and the Department of Planning and Zoning as an agricultural area (the property is noted as agricultural on the Harford County Land Use Plan, and the parcels are zoned agricultural), the actual use of all properties along Ingleside Road is residential. All lots are generally of a similar size and all are similarly used, with the exception of the Applicant's parcel.

While it is true that agricultural vehicles may, in fact, use Ingleside Road, no testimony was presented that such vehicles use the road with any frequency. This contrasts with the use of Ingleside Road by the Applicant's equipment on at least three days per week. Accordingly, while the use of the road by the Applicant's equipment may be similar to the use of the road by agricultural equipment, the more frequent and extensive use by the Applicant's equipment of the road cannot be ignored. This use presents a potentially serious safety concern to other users of Ingleside Road.

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Ingleside Road is, furthermore, a dead-end road, of narrow width and proportions, and with little or no shoulder. These characteristics exacerbate the negative impact of this equipment on the road, its users, and the residents.

Furthermore, the relative small size of the lot, when compared to parcels in active agricultural use, and its location adjoining “pure” residential uses, are factors which also tend to intensify the impact of the proposed use on neighbors.

Accordingly, it is found that the impact of the proposed uses on the people living in the area will be adverse.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

Originally, the Department of Planning and Zoning Staff Report indicated that the request should not impact traffic in the area. After contradictory testimony from both the neighbors and the Applicant, the Department was asked to review the road issue. Both the Department of Public Works and the Department of Planning and Zoning then concluded that the driveway onto the subject property should be moved farther south, closer to the crest of the hill on Ingleside Road in front of the subject property.

However, the neighbors then testified, again persuasively, that moving the driveway in such a way will reduce sight distances of individuals traveling north on Ingleside Road and will tend to increase the safety hazard. Ms. Wright testified that movement of the driveway will also tend to open up the view from her property of the equipment storage and activity on the subject property. Ed Steere, witness for the Applicant, testified that while he did not object to moving the driveway south, he did not believe it is necessary to do so.

While the testimony of the Applicant and the neighbors was again somewhat contradictory in this respect, it is found that testimony of the neighbors is credible and persuasive. The use of Ingleside Road by the Applicant’s equipment will constitute a safety hazard. Ingleside Road is narrow, winding, with bad sight distances in the vicinity of the subject property. A berm, fencing and landscaping has been erected virtually to the edge of the road along the front of the subject property. This also tends to impact sight distances and reaction times of passing motorists.

The lack of agreement on the best location of the driveway from the subject property onto Ingleside Road is an indication of a problem which has no easy solution. It is not for the Board to determine a safe access point. Based on the evidence of record, it is found that the Applicant’s equipment cannot access and use Ingleside Road in such a fashion so as to provide reasonable safety to motorists and other users of Ingleside Road.



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- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

There should be adverse fiscal impact to the County. However, it is found, that given the size of the lots in the neighborhood in which the Applicant's property is a part and the fairly intensive use proposed to be made on the subject property, the use is not conducive to the orderly growth of this neighborhood. A business of the intensity of that proposed by the Applicant is not conducive to residential stability and growth.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

The finding of the Department of Planning and Zoning, and of Applicant's witness, that the use "should not" have an adverse impact on the community is rejected. The property will house equipment that will generate noise of a commercial nature, including the noise of back-up beepers. Employees will be coming onto the site, at least three days a week, getting ready for work, putting away equipment and tools, preparing for the next days' work, and leaving the property in their vehicles at the end of the day. If the testimony of the neighbors is to be believed (and it is found to be credible), these activities will be accompanied by profanity. The commotion and noise caused by employees entering and leaving the property will be a frequent occurrence. The impact from dust and exhaust fumes from the equipment will also be of a continuing nature, if not a daily occurrence.

Surrounding neighbors will be able to see and hear equipment if not enclosed in the pole barn, and certainly as it is brought to and from the property. The vehicles of and employees coming and leaving the property, being parked on the property, and the other aspects of the commercial operation will be readily visible to those neighbors, particularly Mr. and Mrs. Wright who live across Ingleside Road at a higher elevation. It is found that these emissions from and characteristics of the Applicant's uses will have an adverse impact on surrounding and neighboring residents.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

Police protection is adequate. The ability of Forest Hill and Fallston Fire Departments to respond to fire emergencies on the subject property is questionable given the width and configuration of Ingleside Road and the present driveway entrance. However, this was not addressed at the hearing and no adverse finding can be made.

The property is serviced by a private septic system. The Health Department will require new percolation tests, a new plat for the revised septic system, and on-site sanitary facilities for employees. While the Applicant expressed his intent to meet Health Department requirements, there was no evidence presented that these fairly extensive requirements can be met.

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Nevertheless, it cannot be found that the Applicant's use is adverse based on these considerations.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

As discussed below, it is found that the use is not consistent with the Standards set forth in Schultz v. Pritts, 291 Md. 1, 432 A2d 1319 (1981).

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such uses were identified.

- (8) *The purposes set forth in this Part I, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The Department of Planning and Zoning indicates that the proposal is consistent with the Master Plan for reasons that the "predominate land use is agricultural which includes crop land, pasture land and large areas of dense woodland." It should be noted, however, that the neighborhood of the subject property is not in agricultural use, but residential, as discussed above.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No such impacts are identified.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks are identified.

Accordingly, it can be seen that, when examined in light of the standards of Section 267-9I, Limitations, Guides and Standards, the use will generate an abundance of real and potentially adverse impacts.

Particularly important is the mandate of Section 267-9I which states, *inter alia*:

"Notwithstanding any of the provisions of this Part 1, the Board *shall not approve* an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood." (Emphasis supplied)

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It is accordingly found, for reasons set forth in more detail above, that the use would result in a dangerous traffic condition along Ingleside Road and for that reason it must be denied.

Furthermore, the use must be reviewed in light of the standard of Schultz v. Pritts, 291 Md. 1, 432 A2d 1391 (1981), which determined, generally, that a special exception use may not be denied provided it has no impact greater than those “inherently associated with such a special exception use irrespective of its location within the zone.” (See also Eastern Outdoor v. Mayor and City Council, 146 Md. App. 283, 807 A2d 49 (2002)). It should also be noted that this appropriate standard does not measure impact of a proposed use against other permitted uses, such as agricultural operations. The standard requires an examination of impact of a use at this particular location, compared to impacts at other locations. Is the impact of the use more pronounced at the site proposed than at some other allowable location?

Furthermore, it must be kept in mind, by designating these uses as special exceptions, the Harford County Council had determined them to be generally compatible with other allowable uses.

However, it is found that the presumption of compatibility which these special exceptions enjoy has been negated by the particular facts and impacts of the proposed use as described herein. These uses at this particular property will create more of an adverse impact than if located at some other location within the zone. These particular adverse impacts, and the unusual facts and circumstances which differentiate this property from others within the zone have been discussed at some length above, but include the following: (1) higher elevation and close proximity of properties across Ingleside Road from the subject property which directly and immediately expose those neighboring properties to the noise, fumes, and commercial nature of the Applicant’s use; (2) lack of adequate screening from adjoining properties; (3) the relatively small size of lots which requires the uses to be located close to surrounding residential uses; (4) winding, narrow, Ingleside Road which has limited and obstructed sight distance, and which has only one outlet; (5) lack of any substantial agricultural or commercial uses in the Applicant’s identified neighborhood.

For the above reasons, it is found that the requested special exception will have a greater impact at the proposed location than at other locations within the zone. The Applicant’s argument that the proposed use is similar to other allowable agricultural uses in this agricultural zone is not ignored. However, the particular facts related to the operation of this use, and the topographical and geometric characteristics of the subject property cannot be ignored, either. Those factors contribute to an impact which is more severe at this location than they would be otherwise. For that reason it is recommended that these special exceptions be denied.

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**CONCLUSION:**

It is, accordingly, recommended that the proposed variance and special exceptions be denied.

Date: August 3, 2007

ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on AUGUST 31, 2007.**